

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

IC Energy LLC	:	
	:	
Application for a Certificate of	:	06-0549
Service Authority Under Section	:	
16-115 of the Public Utilities Act.	:	

ORDER

By the Commission:

I. PRELIMINARY MATTERS

On August 7, 2006, IC Energy LLC ("Applicant" or "IC Energy") filed a verified application with the Commission requesting a certificate of service authority in order to become an alternative retail electric supplier ("ARES") in Illinois pursuant to Section 16-115 of the Public Utilities Act ("Act") and 83 Ill. Adm. Code 451 ("Part 451"). As all matters were submitted with the application, 2006, the Administrative Law Judge did not request any clarifications of matters contained in the application. Applicant submitted its certificate of publication showing that on August 11, 2006, proper publication was made in the official state newspaper.

No petitions for leave to intervene filed. A proposed order was not required as the order is not adverse to the Applicant.

II. AUTHORITY SOUGHT BY APPLICANT

Applicant requests authority to offer the sale of electricity and power to eligible nonresidential retail customers with annual electrical consumption greater than 15,000 kilowatt-hours ("kWh") in the service territory of Illinois Power Company, d/b/a AmerenIP ("AmerenIP"). Specifically, Applicant seeks authority to serve its affiliate Illinois Cement Company, LLC at its plant located at LaSalle, Illinois and has electrical demands in excess of 18 MW.

At this time, Applicant has not sought authority to provide single billing services to customers and did not provide the financial information pertaining to Subpart F of Part 451.

III. REQUIREMENTS FOR ALL APPLICANTS UNDER SECTION 16-115(D) OF THE ACT

Applicant is a limited liability company, is incorporated in the State of Delaware,

and is headquartered in LaSalle, Illinois. The Applicant's affiliate owns and operates a cement manufacturing plant located in LaSalle, Illinois and will use the electrical distribution system AmerenIP. Applicant has demonstrated compliance with the requirements of Section 451.20(f)(2). Applicant has provided notice to AmerenIP of its intent to serve in the utility's service area.

Applicant has certified that it will comply with all applicable regulations; that it will provide service only to retail customers eligible to take such services; that it will comply with informational and reporting requirements established by Commission rule; that it will comply with informational and reporting requirements pursuant to Section 16-112 of the Act; that it will comply with all other applicable laws, regulations, terms and conditions required to the extent they have application to the services being offered by an alternative retail electric supplier. Applicant has agreed to submit good faith schedules of transmission and energy in accordance with applicable tariffs and supported this assertion in its verified statement. Applicant has agreed to adopt and follow rules relating to customer authorizations, billing records and retail electric services. Applicant has agreed to confidential treatment of customer data.

Pursuant to the requirements of Section 451.50 of Part 451, Applicant provided a License or Permit Bond in the amount of \$30,000 issued by a qualifying surety authorized to transact business in Illinois.

IV. TECHNICAL, FINANCIAL AND MANAGERIAL REQUIREMENTS OF SECTION 16-115

Applicant asserts that it meets the financial qualifications set forth in Section 16-115(d)(1). For purposes of compliance with the provisions of Section 451.30(c), Applicant demonstrated that it meets the criteria set forth in Part 451.410.

Applicant also represents that it meets the technical and managerial qualifications set forth in Section 16-115(d)(1) and Sections 451.420 and 430. Applicant identified the personnel who purportedly satisfy the criteria, provided biographical information for these individual. The Commission concludes that Applicant meets the technical and managerial qualifications set forth in Section 16-115(d)(1).

V. RECIPROCITY DISCUSSION

Applicant is a single member limited liability corporation, is incorporated in the State of Delaware, and is headquartered in Peoria, Illinois. The Applicant's affiliate, Illinois Cement Corporation, LLC owns and operates a cement manufacturing plant located in LaSalle, Illinois and will use the AmerenIP electrical distribution system to provide electricity to the customers at the LaSalle plant. Applicant has demonstrated compliance with the requirements of Section 451.20(f)(2).

Applicant argues that it complies with the reciprocity provision of Section 16-115(d)(5) of the Act by meeting the plain language of the requirement. Applicant asserts that it satisfies the reciprocity requirement because it can identify its principal source of electricity. IC Energy states that the Midwest Independent System Operator (“MISO”) will be its principal source for the AmerenIP area. Applicant further argues that MISO owns or controls electric transmission facilities for public use and provide delivery services to AmerenIP that are comparable to those offered by the utility.

Applicant notes that AmerenIP has joined an RTO, that being MISO and no longer controls what generation resources dispatched to meet the demand on the AmerenIP system. Also, Applicant notes that AmerenIP has divested itself of all of its major generating assets. IC Energy argues that AmerenIP is no longer impacted by which generating units are selected to serve retail electrical load in its service area. Electrical generation is dispatched by MISO. MISO sends dispatch signals to generators without regard to the contractual obligations between load serving entities and their wholesale counter parts regardless of whether the load serving entity is an electric utility in Illinois or an ARES.

Applicant argues that through these actions there is no longer any concern that an ARES will take unreasonable advantage of the investments made by the formerly regulated industry. In fact, Applicant argues the formerly regulated industry is in a position to compete on a level playing field with an ARES or voluntarily elect not to compete.

Applicant argues alternatively, that it satisfies the reciprocity requirement through its wholesale counterparties. Applicant commits that if necessary it will commit to serve its retail load in Illinois with at least 65% of its power purchases from a pool of counterparties whose affiliate utility markets are open to the formerly regulated Illinois utilities.

Applicant argues a third alternative position that it would commit to serve its retail load in Illinois with at least 65% of its power purchases from a single counterparty whose affiliate utility markets are open to the formerly regulated Illinois utilities.

Applicant offers a fourth alternative and requests the Commission find the reciprocity clause doesn’t apply to IC Energy.

VI. COMMISSION CONCLUSION AND CERTIFICATE OF SERVICE AUTHORITY

As explained more fully below, the Applicant’s discussion filed with the application concerning reciprocity appears to satisfy the requirements laid down in the Appellate Court decision in *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill. Dec. 302, 772 N.E.2d 340 (5th Dist. 2002).

Section 16-115 (d)(5) of the Act states:

That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities;

The Appellate Court decision in *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill. Dec. 302, 772 N.E.2d 340 (5th Dist. 2002) held that before the Commission grants a certificate of service authority, it must find that the applicant complies with each condition set forth in the above section. The Appellate Court further interpreted the phrase, "That if the applicant" to mean, "That on condition that the applicant". (emphasis added) With this interpretation, the Court has imposed three conditions, namely, (1) the Applicant, its corporate affiliates, or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, (2) the applicant, its corporate affiliates, or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further (3) the Applicant certify that it will remain in compliance.

IC Energy, in its discussion, indicated that it planned to meet the reciprocity standard by using MISO as its principal source of electricity as defined in Section 16-115(d)(5). According to IC Energy, MISO offers delivery services that are comparable to those offered by Illinois utilities. IC Energy claims that there have been fundamental

changes in the Illinois electric market and that under the existing market structure it would not take unreasonable advantage of investments made by the formerly regulated utilities by acquiring its electricity through the MISO regional transmission organization (“RTO”).

The Commission recognizes that there have been fundamental changes in Illinois’ electric markets. In fact, the Customer Choice and Rate Relief Law of 1997 brought about many of these changes. The Commission also recognizes the continuing evolution of the wholesale market and the increasing importance of RTOs, especially as they pertain to Illinois. As such, the Commission must consider the changes in the electric market when evaluating the requirements of Section 16-115 (d)(5) of the Act or the Appellate Court’s decision in *IBEW*. The Commission agrees with IC Energy’s position that MISO may be considered principal sources of energy to satisfy condition one of the reciprocity requirement as set forth in the *IBEW* decision. Because of this, the Commission does not need to address the other alternative principal sources of energy presented in IC Energy’s application.

The Commission observes that the Applicant does not own or control facilities for the transmission or distribution of electricity within a defined geographic area used to serve the public. Applicant relies on the principal source of electricity provisions of Section 16-115(d)(5) of the Act.

As noted above, the Appellate Court in *IBEW* requires that “before the Commission grants a certificate of service authority, it must find that the applicant complies with each condition set forth in Section 16-115(d)(5).” In the *IBEW* decision, the Appellate Court clearly stated its concern:

We agree with petitioners’ arguments that the construction offered by WPS and the Commission would give a new entrant an opportunity to take an unreasonable advantage over the existing utilities, for it would allow a new entrant into the Illinois utility market without providing the Illinois utilities affected by the new entrant an opportunity to also compete in the market of the new entrant, hence allowing the new entrant to take an unreasonable advantage of the investments made by the formerly regulated industry. 265 Ill. Dec. 310, 772 N.E.2d 348 (Ill.App. 4 Dist. 2002)

In the instant application, consistent with the statute and the *IBEW* decision, Applicant may comply with condition 1 and 2 identified by the Appellate Court through either “the applicant, its corporate affiliates[,] or the applicant’s principal source of electricity (to the extent such source is known at the time of the application)”. IC Energy’s application demonstrates satisfactory fulfillment of both Condition 1 and Condition 2.

Any concern about providing Applicant an opportunity to take an unreasonable advantage over the existing utilities by allowing a new entrant into the Illinois utility market, without providing the Illinois utilities affected by the new entrant an opportunity to also compete in the market of the new entrant, is resolved through Applicant’s use of MISO as

principal sources of electricity. MISO offers delivery services reasonably comparable to those offered by Illinois utilities. Additionally, Illinois utilities have the opportunity to participate in MISO's electricity markets. Thus, the Commission finds that within the meaning of the Appellate Court's decision in *IBEW*, granting Applicant a certificate will not allow the new entrant to take an unreasonable advantage of the investments made by the formerly regulated industry.

In the Commission's view, the discussion above demonstrates that Applicant has met condition 1 and 2 of Section 16-115(d)(5) as espoused by the Appellate Court's interpretation. As to the third condition contained in Section 16-115(d)(5), Applicant has certified that it will remain in compliance with the Act and with the Commission's rules.

The Commission concludes, therefore, that the application for certification as an ARES should be granted and that the certificate should read as follows:

CERTIFICATE OF SERVICE AUTHORITY

IT IS CERTIFIED that IC Energy LLC is granted service authority to operate as an Alternative Retail Electric Supplier as follows:

SERVICES TO BE PROVIDED: The sale of electricity and power.

CUSTOMERS TO BE SERVED: The Illinois Cement Company LLC manufacturing plant in LaSalle, Illinois with an electrical usage of greater than 15,000 kWh.

GEOGRAPHIC REGION(S) SERVED: The service areas of Illinois Power Company d/b/a AmerenIP.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) Applicant, IC Energy LLC, a business incorporated in the State of Delaware and authorized to do business under the laws of the State of Illinois, seeks authority to become an Alternative Retail Electric Supplier under Section 16-115 of the Act;
- (2) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact; as required by 220 ILCS 16-115(d)(1),

- (4) Applicant has demonstrated that it possesses sufficient technical, financial, and managerial resources and abilities to provide power and energy to eligible non-residential retail customers with annual electrical consumption greater than 15,000 kWh throughout the areas certified herein;
- (5) Applicant has complied with 220 ILCS 16-115(d)(1) through (5) and (8) and 83 Ill. Adm. Code 451;
- (6) the application filed by IC Energy LLC on August 7, 2006 should be granted, subject to the conditions contained herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that IC Energy LLC is hereby granted the Certificate of Service Authority set out in Section VI of this Order, subject to the conditions contained in this Order.

IT IS FURTHER ORDERED that IC Energy LLC shall comply with all applicable Illinois Commerce Commission rules and orders now and as hereafter amended.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 13h day of September, 2006.

(SIGNED) CHARLES E. BOX

Chairman